

*See Lett*  
A TREATISE

Concerning *Vol. 5. 50*

Statutes,

O R



Acts of Parliament:

And the Exposition thereof.

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WRITTEN

By *Sir Christopher Hatton,*  
Late Lord Chancellour of  
ENGLAND.

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L O N D O N,

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A TREATISE

Concerning

STATICS



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*SAHO*

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CHAP. I.

*What a Statute, or an Act  
of Parliament is; Whom  
that bindeth, and when  
it beginneth to take  
force.*

**T**His word *Statute* is  
more general than  
an Act of Parlia-  
ment here in *Eng-  
land*, for that containeth Burgh-  
lees, and even very Ordinan-

## *A Treatise* Chap. 1.

ces in Court-Leet, or Court-Baron. Moreover this word *Statuimus, perpetuitatem designat*; whereas Acts of Parliament do expire many of them by time. But to omit the force of words, and to come to the matter intended:

1. An Act of Parliament is a Law agreed upon by the King or Queen of *England*, having Regal Authority, the Lords Spiritual and Temporal, and the Commons lawfully assembled; which taketh strength and life by the assent Royal; so that I account the rest of  
the

## Chap. 1. of Statutes.

3

the consents to be parcel of  
the substance, and the Royal  
assent to be *Forma interna* & 2.  
*informans, quæ dat rei esse*; yet  
this agreement bindeth not  
the King or Queen, except  
they be named, if it be one-  
rous; for it must be taken as 3.  
agreed unto, for a law to bind  
her Subjects, her self standing  
in Pristine liberty. And though 4.  
Acts of Parliament be con-  
sisting of so many consents, yet  
sometimes in respect of the be-  
nefit, some of them seem to  
proceed from subjects only  
to the Prince, as those of

*A Treatise* Chap. 1.

Dismes and Subsidies, and some other of like nature. Sometimes they seem to proceed from the Prince only, as Pardons and Priviledges, Confirmations of Customes, and such like; And some have reciprocal benefit, as the Statute of 36 E 3. c. 11. ordaineth, that where the Commons of the Realm had granted to the King a great Subsidy, the King in consideration thereof granted, that after three years, nothing should be taken or demanded of the said Commons, but only the ancient custom  
of

of half a mark of every sack of Wooll. But to whom forever the fruit redoundeth, there is no such absurdity that one person is both Agent and Patient ; for the Law conveigheth the thing whether it concern many or one, from them or him that best right hath to give the matter passage to such as the Court is agreed should receive benefit thereof. And because every mans consent in *England* is imployed in the persons there assembled, it is a hard matter to say, that wrong or error is there committed.

5. mitted. *Quia concurrunt consensus omnium quorum interest.* Yet I cannot say but an Act of Parliament may err, whereof I mean to speak in more convenient place.

Now whereas diverse Statutes be penned in the name of the King, we are not to think that the King was sole Enactor; for the Statute *De donis conditionalibus*, saith; *Dominus Rex perpendens necessarium, & utile fore in casibus predictis apponere remedium, statuit, quod voluntas donatoris, &c.* Yet never was Statute with greater consent



## Chap. I. of Statutes.

7

consent at the making, nor better acceptance until this day, put in practice by the subjects, for it is the ground and fountain out of which flow all intailes ; Only I call to remembrance, that when Baron *Fre-  
vile*, and Baron *Luke* in the Exchequer held opinion, that that Court had no jurisdiction in Common Pleas, and among other *Luke* cited the Statute of *Rutland* to that purpose ; Sir *Edward Saunders*, Chief 6.  
Baron, whose opinion I account great in Law, said, that the Statute of *Rutland* was no

B 4

Statute,

Statute, but the Kings pleasure. And therefore I forbear to conclude generally that all Statutes which are so named are written by the consent of the King and Subjects ; yet I know none of that kind, except the Statute of *Rutland* be such a one.

7. The time when the Lords Spiritual and Temporal, and the Commons assembled have agreed upon any Law, and the Royal assent is given to the same, is not the beginning of that Law, for it hath Relation and is accounted to commence from

## Chap. I. of Statutes.

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from the first day of that Session of Parliament, and all the Acts that are concluded upon at one Session, are accounted *Simul tempore*; so that if it be not limited at what day the Statute shall begin to take force, some might be offenders of the Law before it were known. And saving that, that it is meet to credit such men of Learning, as was Justice *Hales*, and divers other Justices, I should never think, that any Law positive, or constitution, should bind, but that which is rightly ordained, and also duey

8. duely published; I say, *Rite lata Lex, & debitò publicata.* And because I am in matter of Relation, I add this, That whensoever a general Pardon is by Parliament, if the cause efficient of any offence be pardoned, the effect is pardoned. As for example ; A man was stricken before the beginning of a Parliament , in the time whereunto the Pardon had relation, and the party stricken died after in a time exempt from the benefit of the Pardon ; this death nevertheless was pardoned , because the  
stroke

## Chap. 2. of Statutes.

11

stroke which was the cause efficient was pardoned.

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### CHAP. II.

#### *A Division of Statutes.*

**O**F Statutes, some be General, and some Particular : Those that extend to all Subjects are General , and the benefit of them the Judges in every Court are of office bound to yield to every Subject, when his case before them needeth that it should so be, whether they be pleaded or not ;

not ; and whether the Parties crave it, or not. But those that are Particular , all men that will have any benefit of them , must plead, or else the Judges are not to take notice of them.

2. Of Particular Statutes, some are general in a particularity, or particular in a generality ; as those that concern all Sheriffs , all Escheators , or any other sort of men, and not all men ; some concern one or a few persons particularly.

3. All those Statutes that concern the King or Queen in their

their body Politick, are general, for they concern all Subjects. Wherefore the Statute whereby the Lady *Latimer* being Queen, as lawfully espoused to King *Henry* the Eighth, had a distinct capacity to take, give and grant of the King, or to the King, or of, and to any other person or persons; concerneth all the Subjects, and is general, because every Subject is a mystical Member of the King's body politick.

A harder matter than is yet 4.  
spoken of remaineth, because  
some Statutes are general in  
Words,

Words, and particular in Intent ; some are particular in words, and general in intent : Of which sort I know no great number, and to set down a rule for them it is very hard, other than to say, when the intent is proved, that must be followed ; *Ut verba serviant intentioni & non intentio verbis* : which is allowable in all laws ; for the words are the Image of the law , and the meaning is , the substance or body of the matter ; but whensoever there is departure from the words to the intent, that must be



be well proved that there is such meaning. The Statute of *Circumſpecte agatis*, nameth but the Bishop of *Normich* and his Clergy, and it is extended and understood to belong to all Bishops in this land, and is a notable boundary to distinguish the Spiritual from the Temporal Jurisdiction. In the seventh year of King *Edward* the Sixth, a Statute was made, that if any Treasurer, Receiver, or other Minister accomptant, their Deputy or Deputies, receive of any person any summe of Money, or other

other profit of or for the payment of any Fees, Annuities, Pensions, &c. more or otherwise than he lawfully might by former Statute, that then the said Treasurer, &c. should pay for every penny otherwise taken, vi s. viii d. and though the words be of any Treasurer, &c. yet it is not understood to belong to any other but the Kings Officers, and not any other mans. I busie not my self at this time much to draw such as these are under a rule, and in the cases rehearsed, there is pregnant reason why the one should

should be taken generally, and the other particularly ; for the first hath been so taken ever since the making thereof, and besides the benefit thereof agreeth as conveniently to every other Bishop and his Clergy , as to the Bishop of *Norwich* ; and the second is taken particularly for all the general words ; both because the preamble which is the key to open many Statutes, as Justice *Dier* saith; favoureth and giveth light to that exposition ; and other men may be spoken with themselves if their

Officers abuse men, though the King cannot at mens pleasures be come unto; and it is chiefly ordained for Religious Persons that had Pensions of the King, who were delayed and defrauded by the King's Officers; and as in these cases, so will there appear special reason of other Statutes in this kind, or else they must be taken according to their words; for as Civilians say,

5. *In dubio hæc legis præsumitur esse sententia quam verba ostendunt.* But if the words and mind of the Law be clean contrary,

## Chap.2. of Statutes.

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trary, that Law or Statute is  
 void. *Ubi manifeste pugnam le-*  
*gis voluntas & verba, neutrum se-* 2.  
*quendum est. Verba quia non*  
*congruunt menti, mens quia non*  
*congruit verbis.* As for exam-  
 ple; A Noble-man of this  
 Realm lately deceased, was at- 3.  
 tainted; *de facto*, of High Trea-  
 son, in Queen *Mary's* time, and  
 in an Act of Parliament it was 4.  
 intended to confirm the judg-  
 ment; and those words were  
 void, because the Attaindor was  
 void by mis-recital; and by  
 consequence, for want of Juris-  
 risdiction in the Commissio-  
 C 2                      ners;

ners ; and because it was void, it could not be confirmed ; for that which is weak may be made stronger, but that which hath no substance cannot be corroborated : *Et confirmare est illud quod est firmum facere.* Likewise divers Statutes that should have been continued in Parliaments have been misrecited, and by that occasion, discontinued and dissolved. Out of the Premisses ariseth the solution of one great doubt, which is ; Whether the Parliament may err, or not ; for it is lately declared wherein it hath

hath erred. And though there be no Court higher to convince or pronounce upon the error, yet when the matter is plain, every Judg may esteem of it as it is, and being void, is not bound to allow it for good and forcible.

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*A Treatise*

## CHAP. III.

*Another division of Acts  
of Parliament.*

**W**Here there are not Essential Differences Divisive, men that would use plainness in Treatises of Learning, are allowed to divide more than once, and so do I at this time : Wherefore I say again, of Statutes, some be Penal, some are Beneficial or Gracious ; And again, some Statutes are constitutive of new Laws, some declaratory of old ; some



go to the abridgment of the Common Law, some to the enlargement. I will not stand upon defining the Members of these divisions, nor shew examples; for they bear their Names and Natures in their forehead, so far forth as doth in this precurse and preparation to the rest of this work; Only I will say with Sir *Edward Saunders*, late chief Baron, of worthy memory, that all Statutes, in a manner, are Penal 6. to some; but if they be beneficial to very many, and punish a few, they are to be counted

gracious, taking that denomination of the prevalent quality. And whereas I have said, that some Statutes are constitutive of new Laws, and go to the enlargement of the Common Law, I cannot tell how it might be taken of some, who hold the Law to be so perfect, and so large, as Reason is in every thing, and beyond Reason a man cannot go, for Reasonable is the Difference constitutive, and convertible with man. But our Laws are not grown to that perfection, nor the grounds of Law are not  
all

all so perfect, but that the contraries of some are as reasonable as our Laws. As for example, The law or custom of the eldest Sons inheriting the whole Land ; how doth the consent of the Laws of other Countries go against that ? and the number of such laws are many. Wherefore seeing Reason must be bridled and restrained in the course of the Law, the law of *England* and 3. reasonable be not convertible, nor always coincident together. I know that Reason may be called the Mother of the Law,

Law, and Maxims the Foundations, in respect of the more part of the Laws; and Maxims may not be denied, but they may be compared, and must be reconciled in every case where they seem to differ; but all this negotiation bringeth us a less matter than that which *Tully de legibus* speaketh of, *Lex est summa ratio, &c.* Neither is this defect peculiar to our law, for the Civil Law saith, *Non omnium quæ à majoribus constituta sunt, ratio reddi potest,*

4. And we are so far from Perfection in our Law, that both  
our

our Courts of Law, yea, and  
our Courts of Conscience, as  
the Author of the Book called,  
*The Doctor and the Student*, saith,  
must leave of necessity some  
things that need reformati-  
on to the Conscience of the  
party himself; and then may  
Acts of Parliament be made  
right well, that are constitutive  
of new Laws, and corrective of  
old.

## CHAP. IV.

*A Division of Interpretation of Statutes.*

1. **N**OW that Statutes are divided, let us likewise divide their Interpretation, which is of two sorts : One is, according to the precise words of every Statute ; the other according to equity : For when the words express not the intent of the Makers, the Statute must be further extended than the bare words ; but ever it must be thought, that

that the meaning of the Makers was such, when there is any proceeding other than the words bear, for it were an absurd thing to make an exposition go further than either the words, or the intention of the Statutaries reached unto, especially seeing a great part of them, are by election, namely all of the Lower House, and then by the law Civil, the Assembly of Parliament being ended, *Functi sunt officio*, and their Authority is returned to the Electors so clearly, that if they were altogether assembled again

again for interpretation by a voluntary meeting, *Eorum non esset interpretari.* For the Sages of the Law whose wits are exercised in such matters, have the interpretation in their hands, and their Authority no man taketh in hand to control: wherefore their Power is very great, and high, and we seek these Interpretations as Oracles from their mouthes.



CHAP. V.

*Of Interpretation of Statutes according to Equity.*

**A**Ll Statutes may be expounded by Equity so far forth as *Epicaia* goeth, that is, an exception of the Law of God; and Law of Reason from the general words of the Law of Man; for such cases are taken for understood, and what is understood is not out of the Law. By the Law of Reason, I mean, as the Author  
of

of the Book called, *The Doctor and Student*, doth the Law Eternal, or the Will of God, known to every man by the light of natural Reason; and by the Law of God, I mean the Old and New Testaments, not favouring their Opinions, that by circuit of Argument would batter or beat down any good Law of man by colour of contrariety thereof to the Word of God, when the truth in plainness of dealing is otherwise to be discerned. The Statute of E. 3. ordaineth that no man upon pain of Imprisonment

sonment should give Almes to a valiant Beggar : yet if one meet with such an one in so cold weather, and so light apparel, that if he have no cloaths given him, he shall die before he shall come to any Town : If a man give him Apparell, he offendeth not the Law ; for there is an inward dispensation by the bond of Christian Charity and Compassion.

By the Statute *De frangentibus prisonam* , It is Felony if a Prisoner break Prison ; yet if the Prison-house be on fire, and the Prisoners break it, they

D

are

are excused by the Law of Reason. And this is as evidently true, as it is manifest that the Law punishing Blood-shed is not against the Barber or Surgeon that letteh Blood in exercise of his Faculty, for the health of man; and that the Statute *De malefactoribus in partibus*, Meaneth not to punish any but unlawful Hunters, and not such as have leave to shoot at a Deer, and shooting hit a Pale or Tree.

2. Furthermore, to exceed the limits of *Episcopi*, some Statutes are ampliative of the Common Law,

Law, reforming matters need-  
ful in the Commonwealth, and  
supplying a defect in the Com-  
mon Law. As the Statute that  
giveth Action against the War-  
den of the Fleet, for suffering  
to go at large any Prisoner,  
there being by judgment, at the  
suit of any Party, by Bail, Main-  
prise or Balton, without agree-  
ing with the Parties; and to re-  
cover the value of the debt at  
the Keepers hands: This is  
extended to all Sheriffs, and  
Gaolers, or Keepers of Prisons;  
Yet some think this Reforma-  
tion to be drawn from the Sta-  
D 2 tute,

tute of *Westminster* the 2d. giving Auditors power to imprison Accomptants found in Arrearage ; but from whether-soever Statute the Reformation proceedeth , common utility and necessity requiring that those that are justly condemned, should be safely kept to satisfy the Law , and that the negligence or lewdness of Gaolers , or other Officers , should not make the grave judgments of the Sages of the Law elusory , and the hope of Suitors frustrate, upholdeth this dilatation. But in all Expositions

sitions by Equity, there must be parity or minority of Reason, and good judgment of evident utility publick, and necessity for supplying defects in the Law; and it would be utility or necessity proved otherwise than by circuit of argument, or far borrowed circumstance, that is to say, plain and evident.

The Statute *De donis conditionalibus*, hath but three kinds of intails specified; and yet there are divers other founded upon the equity thereof, though the Statute have not every

mans good word ; but as the  
*Doctor and Student* rehear-  
seth, is calumniated of divers  
as brought in of self-love and  
singularity, by those Lords and  
Gentlemen that were then in  
the Parliament, House, for ad-  
vancement of their Blood, and  
perpetuation of their Honours  
and Names, yet are all those  
extensions received lovingly  
and generally : And seeing it  
not without some mans refra-  
gation so well born out and  
allowed, I cannot think the  
contrary, but that when more  
plain and evident utility pub-  
lick,



lick, and necessity for supplying defects in the Law, shall be ready to warrant expositions, by equity they will be allowed: For if all Estates tailed, were Fee-simple Conditional, as they were before that Statute, men would think the Law as good and perfect as now it is, and as godly, leaving liberty, for the time, to the Possessor, to bestow his Land in Fee, as God should move his heart, which many times would be better than upon his own Blood degenerated from ancient Virtue. Nevertheless,

these enlargements of this Statute, *De donis conditionalibus*, are quietly retained, and lovingly embraced, because they have the surer, that is to say, the abler sort to maintain them; for commonly every man possessed of any good thing, be it Land, or whatsoever else is dear to man, thinketh that Law to have good favour and relish, that conveyeth and conducteth the same to his Posterity.

The Statute of *circumspecte agatis*, nameth only the Bishop of *Norwich*, and his Clergy, and yet

yet appertaineth to all the Bishops in *England*; and is so taken of all men without exception, which I suppose to be for the causes above recited; that is, because it maketh to publick good; that is, to concord between the Governours Spiritual and Temporal, and to the quiet of the Subjects generally, containing a distinction in very main points of the Jurisdiction Ecclesiastical from the Temporal.

Moreover some Statutes are 3.  
expounded by Equities, to reach to things of Vicine nature

ture and condition; and sometimes, because the one cometh in lieu of the other, and the things lie under the same necessity of Reformation that the cases expressed are under; and therefore the Statute that saith, that the Executor that first cometh by distress, shall be taken, is extended to Administrators. The Statute of *Westm.* 2. cap. 3. saith, *Admittantur beredes vel illi ad quos spectat reuersio*, and by equity of the same he in the remainder is received. The Statute of 13 R. 2. giveth receipt for faint pleading,

pleading, and is extended to  
saint defending. The Statute  
of *Acton Burnell* saith, If Pray-  
sers prize Goods too high,  
they should take them by the  
price, this is construed to  
reach to extenders of Land.  
The Statute of *Westm. 2.* that  
giveth, *Cui in vita*, is extend-  
ed to *Cui ante divortium*. The  
Statute of *E. 3.* That Execu-  
tors shall have Action of Tres-  
pass, *De bonis asportatis in vita*  
*testatoris*, is extended to Ad-  
ministrators. The Statute of  
*Glouc. cap. 7.* is, that where  
Tenant in Dower alieneth, he  
in

in reversion shall have Writ, *In casu proviso*, and by the equity thereof, tenant by the courtesie, tenant for term of life, alien in reversion have Writs of Entry, *In casu consimili*. The Statute of Glouc. cap. 1. is, that the Disseisee shall recover damage against every one that is found tenant after the Disseisin, and by the equity thereof Writ of Intrusion is founded.

4. Sometimes Statutes are expounded by Equities, because, Law and Reason, repugn to the open sense of the words, and

and therefore they are reformed to consonance of Law and Reason. The Statute of 25 E. 3. That by exception of *non tenure* of parcel, no Writ shall abate, reacheth not to things intire, as a Mannor, for *non tenure* of any parcel of a Manor, abateth the whole Writ, because a man by former Law may not demand any intire thing without foreprise of such parcel as is not in the Tenants possession, and therefore the Statute is understood of things severall, as of Acres, Perches, and such like. The Statute of  
*Westm.*

*Westm. 2. of Cessavit, saith, Fiant brevia de ingressu heredi petentis super heredem tenentis, & super eos quibus alienata fuerint huiusmodi tenementa.* And yet if the Demandant die, the Heir shall not have the *Cessavit*, whereby they should be recovered, because the Arrearages come not to the Heir in right. The Statute of *Glouc.* ordaineth, That if Tenant by the courtesie alien, and against the Heir guaranty be pleaded, if he have Assets, to him in Fee-simple, descended from the same Ancestor, he shall be barred; but  
if



if he have not Affets to him already descended, but that after they shall descend; then the Tenant shall have recovery by Writ of Judgment, that shall issue out of the Roll of the Justices, before whom the Plea was pleaded; and by the equity of the same Statute, if with Affets, garranty of the Tenant in tail be pleaded, where he hath not Affets, but after Affets is to descend, there the Tenant shall have *Scire facias*, to have the Affets, and not the Land tailed; because that the Issue might after recover

cover that from him; and so the Statute giveth to the Tenant the thing aliened, and to the Issue the Assets; and by the equity the Issue shall have the thing aliened, and the Tenant shall have the Assets; and this is because that former law would not suffer the Land entailed effectually to recompence the party disinherited, and so the Statute should have served to little purpose, or none, if it had not been thus expounded. 32 H. 8. A Statute was made against buying of Titles of Land, which Justice

Justice Mountague in the Commentaries expoundeth thus : Except such Person and Persons have been in possession thereof [making a full point there] or of reversion, or remainder thereof [making another point there] or have taken the Rents or Profits thereof, by the space of one year ; so that these words *by the space of one year* shall be referred only to the last clause of receiving Rents, and so he in the reversion or in the remainder, or he that hath been in possession, though it were but an hour, hath power

to alien; for he saith, that understanding the Statute, according to the letter, the Baron being possessed by the space of a year, in the right of his Feme Tenant in tail, might make a Lease, or alien, and he that should enter for mortmain, or by escheat, or recover by any title, might be restrained for a year. All which is inconvenient, and to avoid such inconvenience, the Statute is expounded by such pointing and reference. The Statute of *Articuli super chartas*, against Champerty, hindreth not the  
Father

## Chap. 5. of Statutes.

51

Father from infeoffing his Son and Heir. And the Statute of *Westm. 2. cap. 11.* which saith, that in Appeals it shall be inquired who be Abettors, extendeth not to the Heir that abetteth his Mother. *Anno 5*

*E. 6.* A Statute was made, that if any Treasurer, Receiver, or other Minister Accomptant, or Deputy or Deputies to them, receive of any person any sum of Moneys, or other Profits, of or for the payment of any Fees, Annuities, Pensions, or Warrants, more or otherwise than he might by former Statutes in

such cases, provided that then the Treasurer, &c. so offending, should pay for every penny, or penny worth so taken by way of forfeit, *vis.* viii d. to be recovered in any of the Kings Courts, &c. though these words extend to all mens Officers, yet they are restrained to the Kings Officers only, even for the evidence of Reason; for other men may be spoken with themselves, especially to remedy injustice offered by their Officers; and there is no Statute that limiteth the Fees of other mens Officers besides the

the Kings, and by the Preface of the Act it may appear to be a remedy for those that the Kings Officers defrauded of their Pensions, granted out of Religious houses ; and Justice Dyer saith , that the Preface is the Key to open the intent of the Makers of Acts of Parliament ; and Civilians say, that *Cessante Statuti proæmio cessat ipsum statutum* ; for Reason hath been so forcible against the words of Statutes, that even in the Princes Prerogative, the words of Statutes have been controlled , as the Statute of

5.

*Prerogativa Regis, saith, Dominus Rex habebit custodiam omnium terrarum, eorum qui de ipso tenent in capite per servitium militare, de quibus ipsi tenentes seifui fuerunt in dominico suo ut de feodo, die quo obierunt de quocunque tenuerunt.* Yet if the Kings Tenants have Lands in Knights Service, holden of the King; and other Lands descending from the Mother, holden of another Lord, and die without Issue; the Lands descending from the Mother shall not be in the Kings hands, for they go to the next heir of the Mothers



thers side, and the heir of the Father shall not have them ; wherefore the King, who is but to have the custody of the heir of the Father , shall have but those Lands that to him descended , and not those that went to another heir. The Statute of *Westm. 2.* touching View, which provideth that View shall not be granted in the second Writ, if the Party abate the first, *Per exceptionem dilatoriam* , is restrained ; where it is abated by such an exception dilatory as the Court or another *Tanquam amicus Curie* might

6. might abate it by. An Act of Parliament confirmeth all the Customs of a Town; there are some against Law and Reason, those are not confirmed. 3 *H. 7. cap. 1.* It is ordained, That the Chancellor and Treasurer of *England*, for the time being, and Keeper of the Privy Seal, or two of them, calling to them a Bishop, and a Temporal Lord of the King's most honourable Privy Council, and the two Chief Justices of the King's Bench and the Court of Common Pleas; or in their absence, two other Justices

Justices have Authority to examine Riots, &c. And it is holden, that none are Judges in this Court, but the Chancellor, and Treasurer, and Keeper, or two of them; and the other are but Assistants, and not Judges; yet it is held an error if they call not such persons as is limited by the Act; for Law and Reason say, *Licet presentia aut consilium alicujus requiratur, in aliquo actu, requirens non tenetur illud sequi.*

Finally, Every Statute doth 7.  
either bring forth some new thing, or is declaratory of former

mer Law, and therefore every Statute must be expounded to have some good operation, not as a thing needless or void. The Statute of 32 H. 8. c. 13. providing that Leases for years made by Abbathies, &c. shall be good for 21 years, only from the time of the making, if so many years be by the demise, lease, or grant specified; or else for so many years as be expressed, so that the old Rent be reserved, and so that the said Lease or Leases exceed not 21 years: This first (*so that*) is expounded to be conditional,

nal, and the second (*so that*) is but declaratory; for if the old Rent be not reserved, all is void, through breach of the condition: but the second, so that the said Lease or Leases exceed not 21 years, doth only limit the meaning, and declare that such Leases shall be good for so long, and no longer; and if there be mention of more years, the residue that exceed 21 are void, but not the whole term; and if it should be otherwise expounded, the latter words would overthrow all the intent of the former, for  
all

all those Leases for the most part exceeded 21 years. The Statute of *Glouc. cap. 3.* saith, In like manner be not the Heirs of the Feme, after the death of the Father and Mother, barred of Action to demand the Heritage of his Mother, whereof no Fine was levied: These words [no Fine] are taken for no lawful Fine; that is to say, levied both by Father and Mother, for else it had been without any operation; for a Fine levied by Father only, was void before, and therefore that the Statute

Statute might bring forth some good fruit, it is expounded as before is said. Likewise if a Statute in common sense of the letter, correct one person, whereas it is intended to chastise another, it must be reduced to the true meaning of the Makers. As the Statute, 8. *De pannis*, against Fore-stallers, made 25. E. 3. saith, That the Goods and Cattels by Fore-stallers bought, shall be forfeited to the King: If the Buyer therefore agree with the Seller here the penalty might lie upon the Seller, who peradventure

venture never sold to a Fore-  
 staller before, and the Fore-  
 staller might go free if the  
 Goods might be taken away as  
 forfeited, so soon as the Buyer  
 and Seller were agreed; And  
 therefore to satisfy the extent  
 of the Law, which is to punish  
 the Fore-staller, agreement  
 executed is taken, which is a-  
 greement and payment; and  
 not agreement executory, which  
 is before payment.

CHAP.



CHAP. VI.

*That some Statutes Penal  
may be expounded by  
Equities.*

**S**Tatutes Penal, may be, and I.  
commonly have been taken by Equity so far forth as the exposition applieth to favour and benignity, or to the propagation of a good Law, supplying a former defect in the execution of Justice ; for the Exposition is not Penal,  
but

but serveth to the impenalling of rigorous Law in some points, according to the Rule, *Odia restringi convenit*. In the restraint of rigour, there is greater favour than in some Statutes favourable, or giving men priviledg or preheminence ; for these do but increase a man's good Estate, those other save the Head, preserve Liberty , deliver from Pains Corporal and Pecuniary , and sometimes also from the note of Ignominy ; but I cannot say of the contrary part, that Laws favourable

able and indulgent may be straitned, *Quia favores conveniunt ampliari.* And I refuse to follow *Cicero*, saying, *Melius est innocentem damnari quam nocentem causam non dicere,* For it is against all Christian Laws, humane Infirmary, and Corruption, and mans often falls considered. Moreover Pains and Penalties inflicted for Transgression, are chiefly for Example sake; *Ut pena unius sit metus multorum*; the harm and damage done being many times irreparable; in which case, it were great folly to

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pro-

propose for terror any to punishment, whom the Beholders should pity for that cause to be afflicted.

2. And therefore to shew what Statutes Penal may be extended by Equity, I suppose most of those Statutes Penal which are devised to supply a defect in the Common Law, or to remedy a great mischief in the Common-weal, are extended by Equity unto cases under Majority, or parity of Reason with the Statute established, as may appear by the Statute of R. 2, against the Warden  
of

of the Fleet, for suffering any Prisoner there being by Judgment, at the suit of any Party, to go out of Prison, without agreeing with the party, which is worthily extended to all Sheriffs and Gaolers, or Keepers of Prisons; for though this Act be Penal, yet there is so great expediency in the enlarging thereof, that all men allow it.

The Statute of *Acton Burnell* likewise before mentioned, against Prayers of Goods, that prized them too high, is applied to extenders of Lands,

with divers other of that kind, which I omit, because it is needless to make doubt of that point.

Secondly, I suppose that those Statutes Penal, or Restrictive of the Liberty that the Law otherwise giveth to man, as are in the most wise mens judgments either equally, or more beneficial than they are penal, may be extended by Equities, as the Statute of *West. 2. cap. 1.* saith, *Non habeant illi quibus tenementum sic fuit datum sub conditione, potestatem alienandi;* abridgeth the Donees in tail from

from doing their pleasure with their Lands, but it recompenseth them in the eye of the wise, by the reservation and safe keeping thereof to the behoof of their Posterities; and because here is equal good to the evil or damage that they seem to sustain, this Statute is the rather extended by Equities, though there be divers good reasons beside for the same; for where there is but mention of the Donees, it is extended to all their Heirs infinitely. But some may say, and that truly, though this

Statute be restrictive of a mans free disposition of his Lands, yet it is not properly called Penal, and therefore I go to another point.

3. And thirdly, It is to be noted, that if a Statute Penal give but recompence, though the recompence be somewhat liberal, it may be extended by Equities; and this agreeth with the Civil Law, that alloweth a Statute Penal to be extended, that is, *Bonum anime licet damnosum rebus*, as the Statute of Waste saith, if any make waste of that he holdeth

Ex



## Chap. 6. of Statutes.

71

*Ex dimissione*, is extended to Land, holden *Ex legatione*. The Statute of 7 H. 8. cap. 1. which saith, that the Defendant shall recover damages; if the Plaintiff be barred in second deliverance, is expounded to give the Defendant damage if the Plaintiff be *non-suit*. The Statute of 4 H. 7. cap. 17. saith, If *Cestuy que use* of Lands, holden by Knights service die, and no Will by him declared, that the Lord shall have the Ward; for it is counted as no Will to hinder that purpose, because such uses were invented to de-

F 4

fraud

fraud their Lords of their Wards, and Wardships come in respect of Knights-Service, to be done by persons thereto unable for imbecillity and tender years, and are a kind of recompence.

4. And to be short, there are few Statutes Penal, which may not be expounded by Equities, that are Beneficial to the Common-wealth, or more part of good men, and Penal but to a few, not worthy to be favoured in such cases, if it so please the Judges of the Land to agree. Yet always I except those

those that inflict most grievous Punishments, for those are never extended by severity further than their words in some sense may bear. Indeed sometimes containing them within the words, though in an unusual sense, they are largely taken : as the Statute that maketh it Treason for the Servant that killeth his Master, toucheth him as grievously that killeth his Mistress, making that word to serve both Sexes. But the words in some sense stand always where the Penalties be very grievous, and therefore the

- the Statute of Attaints, and the Statute of 32 H. 8. of buying Titles, are not expounded by Equities. But
5. *Fynex*, Chief Justice in King *Henry* the Seventh's time saith, That touching Attaints, there was yet further reason why they should not be taken for Equities, because former Laws or former Statutes, left them not altogether unpunished; whose Opinion I think to stand good at this day.

CHAP. VII.

*Of Statutes that must be  
taken strictly.*

**N**OW to speak of Statutes  
that are taken strictly,  
it may be briefly done ; for  
all must be taken within the  
compass of their own words,  
which have not some warrant  
by Law, or by good reason to  
be taken by Equities. And yet  
to handle this matter somewhat  
more specially , I agree that  
those

1. those Statutes which are grievously Penal, and those that derogate from the Common Law, and those that save not in their general disposition persons commonly in all Laws favoured, as Infants, Femmes Covert, Men beyond the Seas, Men in service of their Prince, such as are imprisoned, such as are of *Non sane memory*, must be strictly taken; except there be especial Warrant to take them by Equities. Likewise those Statutes that go to the abridgment of Fines, because they are devised

Chap. 7. of Statutes.

77

devised for general repose, and secure contentment, which amplifieth every good gift that God giveth to man. As the Statute of *Westm.* 2. concerning intailed Lands, saith, *Si finis super bon. tenementa levetur sit ipso jure nullus.* Here *nullus* is restrained to the right of the intail, and *finis* is *aliquis* to other intents, for it is discontinuance of the possession. The Statute of 32 *H.* 8. *cap.* 33. ordaineth, That no dying seised of a Disseisor, shall toll the entry of him that right hath, except the  
Dis-

Disseisor had peaceable possession by the space of five years; yet if an Infant Abator die seised within five years, he in the reversion, or the remainder, cannot enter. The Statute of *Glouc. cap. 3.* saith, In like manner be not the Heirs of the Feme, after the death of the Father and Mother barred of Action, to demand the Heritage of his Mother, whereof no Fine was levied. These words, *whereof no Fine was levied*, are not suffered to go at large, to corroborate a Fine levied by the Father



Father only, but is restrained to a Fine levied by Father and Mother. The Statute of 32 H. 8. against those that buy Titles, shall not be expounded by Equity, neither the Statutes that give Attaints. The Statute *De malefactoribus in parcis*, is not extended *Ad malefactores in forestis*. The Statute of *Westm. 2. cap. 40.* ordaineth, That where the Baron alieneth the Land of the Feme, *Non differatur scētia mulieris post obitum viri sui per minorem etatem heredibus qui warrantizari debet.* This *heredibus* might extend to the

- the Heir of any Alience, but it is restrained to the Heir of the Baron only; and if the Heir of any other Alience be under age, the Suit shall *not* stay. Every private Statute must be taken strictly, especially if it be penal. Therefore if a Statute be, that all Estates of Land to a certain man made, shall be void to him and to his Heirs, and an Estate is made to him and to his Feme, and the Feme survive; his and her son shall inherit as Heir unto her: for Statutes private, and particular Customs
- 2.

stoms are in like degree ; and  
as Civilians say , *Statutum &*  
*consuetudo pari passu ambulant :*

And therefore if there be a cu-  
stom in some place , that an  
Infant may make Feoffement  
at 15 years of age, as I take  
it some such custom is in  
*England* ; this shall not be ex-  
tended to a release to be made  
by an Infant in that place by  
force of that custom. All

3.

Statutes appointing a thing to  
be done in a form must be  
strictly taken touching the ob-  
servance of the Form and cir-  
cumstance specified, and there-

G

fore

fore the Statute that giveth power to Auditors to commit to the next Gaol Accomptants found before them in Arrerages, saying, *Per testimonium Auditorum mittantur proximæ Gaolæ*, is strictly taken both in the number ; so that one Auditor cannot commit ; and in the Gaol , so that he must be sent unto the next Gaol, though it be in another County. The Statute of 21 E. 3. provideth, that error in the Exchequer shall be corrected and amended before the Chancellor and Treasurer , and therefore the persons

persons named, and no other, may correct and amend it in any other Court. For Statutes in the affirmative, imply a negative, when they be constitutive of new Law, and there is no Law nor Statute beforehand to the contrary thereof : but where there is a former Statute or Law contrariant, it is not taken away by implying a negative in an affirmative, as 27 H. 8. *Wales* was united to *England*, and 34 & 35 H. 8. Authority was given to the Justices in *Wales* affirmatively, giving them Jurisdiction to

4.

try all Penal Statutes. This taketh not away the Authority that Judges had before in other of her Majesties Courts : And though some say , that a Statute in the affirmative defeateth nothing , yet am I not of their mind , for the cause

5. and reason aforesaid. And further , because I know the Statute of 21 H. 8. gave the King the possessions of divers Colledges in such state as they then were ; and though the possessions of some of them came not to the Kings hands three or four years after, nevertheless

theless all the Leases granted between the time of the Statute and the Kings entry, are void by this Statute. So that this affirmative defeateth with great reason; for when the Statute had settled in the King, the right, title and interest of those Lands that appertained to those Colledges, it was great reason that the Leases of other men out of whom the right was passed away and devested, should be void and of no force.

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